



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, OLC (Tenants)
OPR-DR, MNR-DR, FFL (Landlords)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application October 31, 2022 (the “Tenants’ Application”). The Tenants applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 23, 2022 (the “Notice”)
- For more time to dispute the Notice
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement

The Landlords filed their application November 03, 2023 (the “Landlords’ Application”). The Landlords applied as follows:

- For an Order of Possession based on the Notice
- To recover unpaid rent
- To recover the filing fee

The Tenants appeared at the hearing. The Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenants included a third tenant on their application; however, they advised this is a child and therefore I have removed the third name from the style of cause.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and dismiss the request for an order that the Landlords comply with the Act, regulation and/or the tenancy agreement. The request for an order that the Landlords comply with the Act, regulation and/or the tenancy agreement is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlord confirmed receipt of the hearing package for the Tenants’ Application from the RTB in November. The Landlord testified that they did not receive evidence from the Tenants. The Tenants testified that they probably did not serve their evidence on the Landlord and then said they served it in person but do not know when. I was not satisfied the Tenants served their evidence on the Landlords as required by rule 3.14 of the Rules. I heard the parties on whether the evidence should be admitted or excluded. I excluded the evidence pursuant to rule 3.17 of the Rules because I found it would be unfair to consider it when I was not satisfied it was served on the Landlords such that the Landlords could respond to it at the hearing.

The Tenants confirmed receipt of the hearing package for the Landlords’ Application. The Tenants testified that they did not receive the Landlords’ evidence. The Landlord could not provide proof of service and therefore I found the Landlords’ evidence was not served on the Tenants as required by rule 3.14 of the Rules. I heard the parties on whether the evidence should be admitted or excluded. I excluded the evidence pursuant to rule 3.17 of the Rules because I found it would be unfair to consider it when I was not satisfied it was served on the Tenants such that the Tenants could respond to it at the hearing.

I did admit the Notice and tenancy agreement because the parties are both aware of these documents despite the service issues.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Notice, tenancy agreement and all testimony and

verbal submissions of the parties. I will only refer to the evidence I find relevant in this decision.

I note the following in relation to Tenant S.S. during the hearing. Rule 6.10 of the Rules states:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Tenant S.S. was disruptive throughout the hearing. At one point, I told S.S. I would put them on mute due to their behaviour. I did mute S.S. and S.S. hung up, leaving the conference call.

Issues to be Decided

1. Should the Tenants be given more time to dispute the Notice?
2. Should the Notice be cancelled?
3. Are the Landlords entitled to an Order of Possession based on the Notice?
4. Are the Landlords entitled to recover unpaid rent?
5. Are the Landlords entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The agreement started September 01, 2022, and is for a fixed term ending June 29, 2023. Rent is \$1,700.00 per month due on the first day of each month. The Tenants paid an \$800.00 security deposit.

The parties agreed there were prior tenancy agreements between them.

The parties agreed it is the Notice dated October 23, 2022, that is at issue.

The parties agreed that the Notice was served on, and received by, the Tenants October 23, 2022.

The Tenants testified that they needed more time to dispute the Notice because it was a long weekend when they received it, they were stressed and they were overwhelmed.

The Landlord testified that the Tenants did not pay rent for August or October of 2022 and this is the basis for the Notice. The Landlord testified that rent for August of 2022 was supposed to be \$1,575.00 but they were accepting \$1,500.00. The Landlord testified that rent for October of 2022 was \$1,600.00. Given this, the Landlord testified that \$3,100.00 in rent was outstanding when the Notice was issued.

The Tenants testified that rent for August 2022 was \$1,500.00; however, they did not pay August rent because it was free due to the Landlords issuing the Tenants a Two Month Notice. The Tenants testified that they disputed the Two Month Notice and a hearing has been set for March 23, 2023.

The Tenants testified that October rent was \$1,600.00. Tenant M.J. testified that they are positive they paid October rent.

The Landlord testified that the Tenants have not paid any rent since being issued the Notice and that \$11,100.00 in rent is outstanding.

Tenant M.J. testified that they paid \$700.00 to the Landlords in October of 2022 and no rent since. Tenant M.J. acknowledged the Tenants did not have authority under the *Act* to withhold rent.

The Landlord sought an Order of Possession effective one week after service on the Tenants.

The only admissible evidence is the Notice and tenancy agreement.

Analysis

Section 26(1) of the *Act* requires tenants to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows landlords to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

- 46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date...

There are only six reasons tenants can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and

6. When the landlord consents to the tenants withholding rent.

Section 66 of the *Act* addresses extending timelines and states:

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances...

I accept the testimony of the parties that the Tenants were required to pay \$1,500.00 in rent for August 2022 and \$1,600.00 in rent for October 2022, by the first day of each month.

I accept the Tenants did not pay August 2022 rent because the parties agreed on this.

I do not accept that the Tenants were entitled to withhold August rent due to being issued a Two Month Notice because the Tenants disputed the Two Month Notice, a hearing was set for March 23, 2023, and the Tenants did not vacate the rental unit. The only reason the Tenants could have disputed the Two Month Notice was on the basis that they say it is not a valid notice to end tenancy. The Tenants cannot both take the position that the Two Month Notice is invalid and dispute the Notice but also withhold one months rent based on being issued the Two Month Notice. The Tenants would only be entitled to withhold one months rent if issued a valid Two Month Notice. Given the Tenants disputed the Two Month Notice and did not vacate the rental unit pursuant to the Two Month Notice, I do not accept that they had authority under the *Act* to withhold August rent. I find section 46(3) of the *Act* does not apply and the Tenants were required to pay \$1,500.00 in rent August 01, 2022, pursuant to section 26(1) of the *Act*.

Given the Tenants did not pay August rent as required, the Landlord was entitled to issue the Notice pursuant to section 46(1) of the *Act*.

I find the Notice was served on, and received by, the Tenants October 23, 2022.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenants had five days from receipt of the Notice on October 23, 2022, to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I find the Tenants did not pay the \$1,500.00 owing for August rent by October 28, 2022, because the Tenants did not take the position that they did.

The Tenants did not dispute the Notice by October 28, 2022, as their application was filed October 31, 2022.

The Tenants sought more time to dispute the Notice; however, the Tenants have not provided any compelling evidence of exceptional circumstances and this request is dismissed without leave to re-apply.

Given the Tenants did not pay the outstanding rent or dispute the Notice by October 28, 2022, section 46(5) of the *Act* applies. The Tenants are conclusively presumed to have accepted the Notice and were required to vacate the rental unit by November 02, 2022, the corrected effective date of the Notice.

The Landlords are entitled to an Order of Possession effective one week after service on the Tenants pursuant to section 55 of the *Act*.

The Tenants agreed they did not pay August rent. The Tenants testified that they paid \$700.00 to the Landlords in October. The Tenants acknowledged they have not paid rent since October of 2022. I find the Tenants owe the following:

- August 2022 - \$1,500.00
- October 2022 - \$900.00 (\$1,600.00 - \$700.00 paid)
- November 2022 - \$1,600.00
- December 2022 - \$1,600.00
- January 2023 - \$1,600.00
- February 2023 - \$1,600.00
- March 2023 - \$1,600.00
- **Total = \$10,400.00**

I am not satisfied the Landlords have provided sufficient evidence showing the Tenants failed to pay the entire rent amount for October 2022. I find the Tenants owe rent for all of March given it is almost the end of the month and given the Order of Possession will not be effective for one week after it is served on the Tenants.

I award the Landlords \$10,400.00 in outstanding rent.

Given the Landlords have been successful in their application, they are entitled to recover the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants owe the Landlords \$10,500.00 and the Landlords are issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlords are issued an Order of Possession effective one week after service on the Tenants. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlords are issued a Monetary Order in the amount of \$10,500.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 20, 2023

Residential Tenancy Branch